IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.76207 M OF 2006

DATE OF DECISION: December 18, 2006

Joginder SIngh

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Kanwaljit Singh Ahluwalia, Advocate,
for the petitioner.

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RANJIT SINGH, J.

The petitioner, who has been summoned to face proceedings under Section 36 read with Sections 3, 5, 8, 9, 14(2), 15, 18 and 21 of the Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as “Apartment Act”) and 120-B of the IPC, has filed the present petition, seeking quashing of the complaint instituted against him by respondent No.2-Punjab Urban Planning & Development Authority and the consequent summoning as afore-mentioned.

Issue involved relates to non-applicability of vicarious liability in a criminal proceedings. The petitioner points out that he has given a general power of attorney in favour of his co-accused, Pawan Kumar son of Anand

Parkash, who has sold the plots as alleged in para 4 of the complaint, as such the petitioner pleads that he cannot be held responsible for the act of his attorney, for any criminal liability as he is not the one who has developed any colony to fall within the penal sweep of the provisions of Apartment Act. Making reference in detail to provisions of the Apartment Act, the petitioner has alleged that the plots in question were sold by attorney in small pieces, thereby committing breach of penal provisions of the Apartment Act. In this context, the petitioner has urged that any breach of penal provision by the attorney cannot be fastened on the principal i.e. master with criminal liability. As per the petitioner, civil liability or civil consequences are always binding on the principal or the master for the acts of agent or attorney but no way criminal liability can be passed on to the principal by the act of agent or attorney. It is accordingly urged that vicarious liability is alien to criminal law. By referring to power of attorney, annexed as P-4, the petitioner would submit that no authority was given to the attorney to sell the land for carving out a colony. He would maintain that Section 2 of the Apartment Act exempts the sale for the purpose of agriculture from any penal provisions of the Act and hence, his prayer for quashing the complaint and the order, summoning the petitioner.

Mr.K.S.Ahluwalia, counsel for the petitioner has referred to *Isak Soloman Macmull Vs. Emperor,* AIR (35) 1948 Bombay 364. This was a case where servant was supplying petrol to the customers without coupons and at rates in excess of control rates without the knowledge of master. In this case, it was held that master is not vicariously liable under the Essential Supplies (Temporary Powers)

Act. This is not a case, where liability of a master and servant on the basis of any attorney was an issue. It was an individual act herein committed by a servant without the knowledge of master, which revealed criminal liability. In this case mens rea was considered as an essential ingredient of the offence against the provisions of Motor Spirit Rationing Order, 1941. Thus, it was held that where a servant sells petrol to a bogus customer in the absence of coupons and in contravention of the Motor Spirit Rationing Order, that too at the rate in excess of the controlled rates under Essential Supplies (Temporary Powers) Act, 1946, when master was not present who also did not have any knowledge of supply of petrol by the servant to bogus customers, then the master was not vicariously liable for the acts of servant. The ratio of this case does not seem to be attracted to the facts of the present case. Similar would be the position in the case of *State Vs. Gangaram and another, AIR 1953 M.B. 244*. This was also a case of sale of clothes above the controlled price by Munim in a shop when owner was absent and owner was not held vicariously liable for the acts of his servant. In *Hanantram and others Vs. the State*, AIR 1953 Orissa 233, the dealer was not absolved from liability for acts of his agent if there was no evidence to show that he had issued specific instructions to his agent not to charge excess profit. The sale of cloth by agent of a dealer without his knowledge at excess profit was held to be in contravention of the notification.

Relying on *Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi*, (2003) 5 Supreme Court Cases 257, the learned counsel has submitted that unless statutorily provided, there is no vicarious

liability under the penal law. He would also refer to *Brathi alias Sukhdev Singh Vs. State of Punjab,* (1991) 1 Supreme Court Cases 519 to point out the essential constituents of vicarious liability under Section 34 of the Indian Penal Code. It was observed in this case if common intention leads to commission of the criminal offence charged, each of the person sharing the common intention is constructively liable for the criminal act done by one of them. Counsel has also referred to *Mohammed Sheriff Vs. State of Kerala*, 2004 (4) R.C.R. (Criminal) 813. In this case, it is held that no vicarious or constructive liability will be attracted in offences punishable under the Indian Penal Code unless and until the ingredients of the provisions of Section 34 or Section 120-B or Section 149 of the I.P.C. are established. As observed in this case, the principle of agency under the power of attorney in civil law is not attracted in criminal cases and thus, in order to saddle with the offence punishable under Sections 120-B and 420 of I.P.C., there should be specific allegation of mens rea. A case of *Sham Sunder and others Vs. State of Haryana,* (1989) 4 SCC 630 has been referred to in support of his submission by the counsel. It was held in this case that person entrusted with the business of the firm and responsible for conduct of the business alone is liable to be prosecuted and not all the partners. On the support of these judgments, the counsel would say that in this case the petitioner would not be vicariously liable for the acts of his agent, who has acted on a power of attorney given by the petitioner.

It will not be fully correct to say that concept of vicarious liability is totally alien to criminal law. Sections 34, 148, 149 and 120-

B IPC are clearly introducing the concept of vicarious liability in criminal law. No doubt, criminal liability is required to be proved on the basis of an offence charged and except in some exceptional cases, one can not be held responsible for vicarious liability. It can not be deduced as a principle that in no case a person can be held liable vicariously. It would depend upon the facts in each case. Even if Sections 34, 148, 149 or 120-B IPC are not attracted, still it is open for any party to urge liability which would be required to be established by evidence. In other words, where the attorney or agent allegedly act without the knowledge of the principal, then the same is required to be established as a fact before the principal is excused of his liability vicariously or otherwise. If this broader principle, as convassed, is accepted, then it would always be open for a person to escape criminal liability by executing power of attorney, making the penal provisions to be redundant. This would be more so in the offences of this nature. It is rather easy for any person to relieve himself from any liability by giving an attorney, though in fact he may have intention or knowledge that land would be sold in small pieces and, thus, an offence under the Apartment Act. The general power of attorney (Annexure P-4), does not give any indication of any restriction that may have intended or imposed by the petitioner on the powers of his agent to act in any particular manner in regard to his land. Rather, the attorney recites that “general attorneys would be entitled to pursue every kind of legal action, civil criminal, revenue, regarding the aforesaid land, from the lower court to the Supreme Court and in every department, to get the mutation sanctioned, to issue every kind of receipts, to execute agreements, to purchase or

get refund the stamp papers, court fee, to engage Advocate on their behalf and appoint special attorney. The general attorneys would be entitled to pursue every kind of action from start to end regarding the aforesaid land, which may though be not mentioned in this General Power of Attorney." Power of attorney containing such wide terms cannot be termed as the one which had provided any restriction, on the enabling powers of attorney to act in any particular manner or to debar him from acting in the manner he actually did. In any event, it would be a matter of fact required to be proved by the petitioner in a Court if there was any restriction imposed on the attorney not to sell the plots in the manner that it attracted the penal provisions of the Apartment Act. Even the general principle culled out by counsel for the petitioner in regard to the aspect of absence of vicarious liability in criminal proceedings is not made out. Except in the case of Mohammed Sheriff (supra), no other case relied upon by the counsel relates to a situation where power of attorney had acted in a particular manner. All other cases referred to and relied by counsel for the petitioner are those where the agent had acted without the knowledge of the principal and under those circumstances, it was found that the master would not be vicariously liable for the acts committed by the agents. In fact, in Hanantram's case (supra), the dealer was not absolved from the liability on the ground that there was no evidence to show that he had issued any specific instruction to his agent not to charge excess profit. Sham Sunder's case (supra) was decided on the basis of facts proved. Hon'ble Supreme Court clearly held that it was accused's obligation to prove that the offence took place without his knowledge or that he exercised all due

diligence to prevent such offence. Thus, he was not absolved in the case only because he was a partner, who was not entrusted with the business. Nothing has been pointed out even in the present case if any specific instructions had been issued by the petitioner to his agent not to sell the plots in the manner he did. Under these circumstances, he cannot be absolved of his liability only by invoking the principle of absence of vicarious liability in criminal law. Even in the case of Mohammed Sheriff (supra), it is held that no vicarious or constructive liability will be attracted unless and until the ingredients of the provisions of Section 34 or Section 120-B or Section 149 IPC are established. In this case, the Kerala High Court has observed that to attract vicarious liability, there should be specific allegation of mens rea against the concerned petitioner, which was found absent in this case. On that basis, the proceedings against the petitioner in Mohammed Sheriff's case (supra) were quashed. Neither it has been so pleaded in the present petition nor it is the case set up that allegation of mens rea and actus reus against the petitioner is absent in the present case. It will be a matter of fact to be determined by the trial Court if any mens rea or actus reus is attributable to the petitioner or not. Reference has been made to the attorney, which does not indicate if the petitioner had any intention to provide any restriction on the powers of his agent to act in any manner, which could absolve him from the consequences on the basis of any liability vicariously coming on to him.

Having regard to the facts of this case as such, the present proceedings cannot be quashed on the ground of general concept of absence of vicarious liability in a criminal cases. I would,

as such, dismiss this petition and leave it open to the petitioner to prove his innocence on the basis that he neither had any mens rea or actus reus to incur liability. It is, however, made clear as a matter of abundant caution that any observation made in this case would not have any effect on the merits of the case and it shall be decided on the basis of evidence and material which is to be produced by the respective parties before the trial Court.

December 18, 2006 **(RANJIT SINGH)**
khurmi **JUDGE**